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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,040	11/17/2003	Donald G. Wheatley	1584-003	3219
26824	7590	10/26/2005	EXAMINER	
ALEX RHODES UNIT NO. 9 50168 PONTIAC TRAIL WIXOM, MI 48393			GORDON, STEPHEN T	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/714,040	Applicant(s) WHEATLEY, DONALD G.	
	Examiner Stephen Gordon	Art Unit 3612	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☒ Newly proposed or amended claim(s) 7 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: as per the final rejection.

Claim(s) objected to: as per the final rejection.

Claim(s) rejected: as per the final rejection.


Claim(s) withdrawn from consideration: as per the final rejection.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____


Stephen Gordon
Primary Examiner
Art Unit: 3612

Continuation of 3. NOTE: Applicant's comments are noted. In general, with the exception of allowable claim 7, the amended claims raise new issues requiring further consideration and/or search. Moreover, upon very cursory review of the amended claims at least some of the claims appear to introduce new issues under section 112 first and second paragraphs. Note claim 2 appears to reference terms that are not present in the new base claim from which it now depends. Amended claim 12 now defines a screw through the circular wall portion. While the instant invention includes a screw 28, it does not appear that such screw is positioned as newly recited. This raises potential issues under section 112 - first paragraph for new matter and additionally under section 112 - second paragraph.

Additionally, applicant's comments regarding claim 1 as newly amended are noted. Applicant indicates that new amended claim 1 is now similar to allowed claim 7. While after cursory review it appears applicant in his amendments to claim 1 is potentially moving away from the teachings of Ragsdale, the claim is in several respects sufficiently different from claim 7 such that new consideration is warranted - note for example, newly amended claim 1 defines a threadably engaged fastener not referenced in claim 1 etc. Note also, the broadening amendments to line 2 of claim 1 via removal of the thin wall tube element would additionally involve at least new consideration.

In summary, claims 1, 2-6, and 12-14 as amended would require additional consideration and/or search. Moreover, at least some of the amended claims potentially introduce new issues under section 112. Upon cursory review, it appears applicant's amendments to claim 1 are at least beginning to move away from the teachings of the cited prior art. However, it is not deemed possible to indicate allowability of claim 1 at this time without further consideration deemed beyond the scope of consideration typically afforded after a final rejection.